

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ROBERT LEE HARRIS,

Plaintiff,

v.

Civil Action No. 2:07 CV 58
(Maxwell)

HARLEY G. LAPPIN, KAREN M. WHITE,
AL HAYNES, DUKE TERRELL, A.W. JETT,
DRENNAN, BOYLE, DR. MCCALLUM,
UNKNOWN PHYSICIAN'S ASST., LT. BILL
CAREY, JOHN DOE EMPLOYEES OF THE
FEDERAL BUREAU OF PRISONS,

Defendants.

ORDER

It will be recalled that on July 31, 2007, *pro se* Plaintiff Robert Lee Harris initiated the above-styled civil action by filing a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971) and the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, *et seq.*

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.02 of the Local Rules of Prisoner Litigation Procedure and 28 U.S.C. §§ 1915(e)(2) and 1915(A).

On May 28, 2008, Magistrate Judge Kaull issued a Report And Recommendation wherein he recommended that the Plaintiff's Complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b)(1) and 1915(e)(2)(B)(i) for failure to state a claim upon which relief may be granted.

In his Report And Recommendation, Magistrate Judge Kaull provided the parties with ten days from the date of said Report And Recommendation in which to file

objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

Thereafter, by Order entered June 17, 2008, the Court granted a Motion For An Extension Of Time To File Response that had been filed by the Plaintiff on June 9, 2008, and directed the Plaintiff to file his response to Magistrate Judge Kaull's Report And Recommendation on or before July 18, 2008. The Plaintiff's Response In Objection To Magistrate Judge Kaull Recommendations Sua Sponte was filed on July 21, 2008.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on July 21, 2008, the Plaintiff filed a Response In Objection To Magistrate Judge Kaull Recommendations Sua Sponte. The Court has conducted a *de novo* review only as to the portions of the Report and Recommendation to which the Plaintiff objected. The remaining portions of the Report And Recommendation to which the Plaintiff has not objected have been reviewed for clear error.

The Court finds that the issues raised by the Plaintiff in his Response In Objection To Magistrate Judge Kaull Recommendations Sua Sponte were thoroughly considered by Magistrate Judge Kaull in said Report And Recommendation. The Court is of the opinion that Magistrate Judge Kaull's Report and Recommendation accurately

reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on May 28, 2008 (Docket No. 33), be, and the same is hereby, **ACCEPTED** in whole. It is further

ORDERED that the Plaintiff's Complaint (Docket No. 1) be, and the same is hereby, **DISMISSED as frivolous and for the failure to state a claim upon which relief may be granted** pursuant to 28 U.S.C. § 1915A(b)(1) and 1915(e)(2)(B)(i). It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: September 22, 2008

/S/ Robert E. Maxwell
United States District Judge